

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANDRE M. KELLY,

Plaintiff,

v.

C/O A. PETERSON #1586,
C/O KE CASPERSES and
C/O COFFEE,

Defendants.

ORDER

13-cv-651-bbc

ANDRE M. KELLY,

Plaintiff,

v.

S. VAN VORST and
NURSES on 9-11-13, 3 to 11 staff,

Defendants.

ORDER

13-cv-677-bbc

This court held an evidentiary hearing in these cases on August 21, 2014 to determine whether plaintiff had exhausted his administrative remedies and could go forward on his claims that employees of the Dane County jail had denied him proper treatment for his grand mal seizures. Plaintiff Andre Kelly appeared in person, without counsel; defendants C/O A. Peterson, C/O Ke Casperes and C/O Coffee appeared by Amy Tutweiler in case no. 13-cv-651-bbc; defendants S. VanVorst and Nurses on 9-11-13, 3 to 11 staff, by Nicholas

Harken in case no. 13-cv-677-bbc.

The question for the hearing was whether plaintiff had notice that he was supposed to file an appeal after prison staff denied his grievances. After hearing the testimony of jail employees and of plaintiff, I found for the reasons stated from the bench that defendants had shown by a preponderance of the evidence that plaintiff had received responses from jail employees to the five different grievances he had filed at the jail and that he had had access to the jail's inmate handbook, which included instructions about filing an appeal when a grievance is denied. (Even if I disbelieved defendants' evidence that plaintiff had signed for a copy of the handbook at his initial booking, which I did not, he acknowledged in his testimony that other prisoners had told him he could obtain such a handbook.) Plaintiff's failure to appeal from the denial of the grievances was not attributable to errors or omissions by the jail or to any effort on its part to keep him from knowing the results of his grievances or the procedures available to him for appealing an adverse determination. Accordingly, defendants' motions for summary judgment on the issue of plaintiff's failure to exhaust his available administrative remedies will be granted.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants C/O A. Peterson, C/O Ke Casperes and C/O Coffee is GRANTED in case no. 13-cv-651-bbc and the motion of defendants S. VanVorst and Nurses on 9-11-13, 3 to 11 staff, is GRANTED in case no. 13-cv-677-bbc. In accordance with Ford v. Johnson, 362 F.3d 395, 401 (7th Cir.

2004), both of these cases are DISMISSED WITHOUT PREJUDICE. The clerk of court is directed to enter judgments in favor of defendants and close these cases.

Entered this 21st day of August, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge